

STATE OF MICHIGAN
COURT OF APPEALS

JOEL WILLIAMSON,

Plaintiff-Appellant,

v

CITY OF LIVONIA and SECOND INJURY
FUND,

Defendants-Appellees.

UNPUBLISHED

April 11, 2006

No. 260274

WCAC

LC No. 03-000422

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the December 15, 2004 order of the Workers' Compensation Appellate Commission ("WCAC") affirming the magistrate's dismissal of plaintiff's petition for benefits. The dismissal was based on the doctrine of res judicata. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

In January 2000, plaintiff, who was employed by the by the City of Livonia Fire Department, filed a petition for workers' compensation benefits alleging a psychological disability arising out of adverse employment actions and a hostile work environment. The alleged injury date was October 18, 1999. Trial on plaintiff's psychological disability claim was held on January 17, 2002. On February 25, 2002, the magistrate granted plaintiff a closed award of benefits for a temporary psychological disability.¹ Defendants appealed the decision to the WCAC, which affirmed the magistrate's finding of a work-related injury, but remanded for further findings on the issue of disability. On remand, the magistrate again determined an award of benefits to be proper, and that determination was later affirmed by the WCAC.

On January 26, 2002, plaintiff filed the instant petition for benefits. This second petition alleged a disability due to hypertension. The alleged injury date was November 21, 2000, and

¹ The closed award pertained to the period of October 20, 1999 to June 11, 2000.

the petition contended that plaintiff was permanently and totally disabled as a result of the condition.²

Defendants moved to dismiss the instant petition for benefits on res judicata grounds. Essentially, defendants contended that plaintiff had been aware, even before the filing of the initial petition for benefits, that he suffered from hypertension and that it might be work related, and therefore, the doctrine of res judicata required plaintiff to bring a claim based on hypertension in the initial proceedings. In response, plaintiff argued that he could not have alleged a hypertension claim in his initial petition because he lacked sufficient medical evidence of such a condition before January 2002.

In granting defendants' motion for dismissal, the magistrate found that plaintiff had knowledge of the conditions asserted in this petition at least one year before the filing of the initial petition, and had suspected that the conditions were related to his employment.³ The magistrate went on to find that plaintiff had ample opportunity to add the instant claims to those raised in the first petition, but failed to do so. In light of these findings, the magistrate concluded that res judicata applies, and the instant petition was barred.

Plaintiff appealed the magistrate's dismissal to the WCAC. Plaintiff argued that res judicata was inapplicable because: (1) there was no final decision of his first claim at the time he filed his second claim, (2) the second claim could not have been litigated in the first proceeding, (3) the two claims did not arise out of the same transaction, and (4) the magistrate's factual findings were not supported by competent evidence.

The WCAC found plaintiff's arguments to be without merit and affirmed the dismissal. The WCAC concluded that even though at the time of the filing of the second petition, "the original decision was clearly not final," because the proofs in the first matter had been closed and the case submitted to the magistrate for a decision, and plaintiff offered "no compelling explanation why his heart disease claim could not have been presented in the original proceeding," plaintiff's "second claim is barred, despite the absence of an absolutely final decision." *Williamson v City of Livonia*, 2004 Mich ACO 398, 5-6. The WCAC also opined that applying res judicata was proper because worker's compensation proceedings were required to be "as summary as reasonably may be." *Id.* at 6. In regard to plaintiff's argument that res judicata was inapplicable because his two claims are separate and distinct and rely upon different proofs and facts, the WCAC concluded that the "distinct nature of the claims is not critical", instead "[t]he essential question is whether the cardiovascular condition could have been litigated at the time of the first claim." *Id.* The WCAC then went on to conclude that the magistrate's affirmative answer to that "essential question" was supported by competent evidence. *Id.* at 6-7.

² The petition was amended in September 2002 to add "coronary heart disease" as a disabling condition.

³ The magistrate also noted that plaintiff should have been aware that, pursuant to MCL 418.405, his heart disease was presumed to be related to his employment with the fire department.

This Court granted plaintiff's application for leave to appeal. In this appeal, plaintiff claims, as he did below, that res judicata does not bar the instant petition for benefits based on hypertension and coronary heart disease. We agree.

II

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while this Court reviews the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701-703; 614 NW2d 607 (2000). Review by this Court begins with the WCAC's decision, not the magistrate's. *Id.* at 701. If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then this Court should treat the WCAC's factual findings as conclusive. *Id.* at 709-710. This Court reviews questions of law in any WCAC order under a de novo standard. *DiBenedetto v West Shore Hospital*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id.* at 401-402.

At issue in this case is the application of the doctrine of res judicata. Generally speaking, there are two forms of res judicata, the "narrow" form and the "broad" form. *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 160; 294 NW2d 165 (1980). "Narrow application bars a second action only if the same question was actually litigated in the first proceeding. Broad application bars as well those claims arising out of the same transaction which plaintiff could have brought, but did not." *Id.* The "broad" form of res judicata applies in worker's compensation cases. *Id.* at 160-162.

The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is "whether the same facts or evidence are essential to the maintenance of the two actions." *Jones v State Farm Mut Automobile Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993), modified on other grounds 447 Mich 429 (1994). If two actions rest upon different sets of facts, or if different proofs would be required to sustain the two actions, a judgment in one is no bar to the maintenance of the other. *VanDeventer v Michigan National Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988). Here, the instant petition seeks compensation for hypertension and coronary heart disease, and the prior petition pertained to a psychological condition. The evidence required to establish plaintiff's second claim would clearly be different than the evidence required to establish plaintiff's first claim.⁴ Consequently,

⁴ Plaintiff's psychological disability in the first action was alleged to be the result of anxiety pertaining to adverse employment actions taken against him and a hostile work environment, and there was some indication that perhaps the chest pains, for which plaintiff is currently seeking compensation, were related to the anxiety he felt at work. However, even assuming there may be some commonality in regard to the evidence presented in both petitions regarding work-relatedness, the evidence regarding the existence and extent of the allegedly disabling conditions would clearly be different.

res judicata is inapplicable to plaintiff's second petition, and the WCAC and magistrate erred in concluding otherwise.

Reversed and remanded to the magistrate for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra